REMARKS

In the Office Action mailed August 27, 2001, claims 1-6, 12, 14 and 15 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,459,046 to Spirg (hereinafter "Spirg"). Claims 1, 11 and 13 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,428,321 to Arens (hereinafter "Arens"). Lastly, claims 7-10 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Spirg in view of U.S. Patent No. 5,719,828 to Haas et al. (hereinafter "Haas").

In response to the Office Action, Applicants have amended claims 1 and 14, and canceled claim 3, which when considered with the remarks set forth below are deemed to place the application in condition for allowance. Support for the amendment of claims 1 and 14 is found in the specification at page 8, lines 12-22; page 11, lines 13-24 and in canceled claim 3. No new matter is being added. Reconsideration of the application is respectfully requested.

Rejection of Claims 1-6, 12, 14 and 15

As described above, the Examiner contends that Spirg anticipates claims 1-6, 12, 14 and 15. Specifically, the

Examiner contends that Spirg discloses a temperature indicator comprising a layer of material which substantially irreversibly changes from a first appearance to a second appearance in response to a threshold temperature. See Office Action at paragraph 2.

In response, Applicants submit that Spirg does not anticipate independent claims 1 and 14, as amended. Specifically, claims 1 and 14 now recites that the layer which changes from a first appearance to a second appearance upon exposure to a threshold temperature is composed of a first portion that is fusible and a portion that is already fused. In addition, claim 1 also recites that the combination of the fused and fusible portions form a visible pattern. However, Spirg does not disclose a temperature indicating surface that has both fused and fusible portions. Spirg at best discloses that the entire surface is of a fusible material which can be additionally colored to indicate the temperature of color change. There is nothing in Spirg that discloses, teaches or suggests a combination of fused and fusible portions. Withdrawal of the above rejection is respectfully requested.

Rejection of Claims 1, 11 and 13

As described above claims 1, 11 and 13 are deemed anticipated by Arens. The Examiner contends that Arens discloses a thermally activated indicator including an absorptive layer (colored stratum layer) with a first pattern printed thereon, a second pattern (coating) with irreversibly fusible material on a surface of the absorptive layer over said first pattern where the partially obscured first pattern is exposed upon exposure of the indicator to a threshold temperature. See Office Action at paragraph 3.

In response, Applicants respectfully submit that Arens does not anticipate claims 1, 11 and 13. First, regarding independent claim 1 and dependent claim 11, claim 1 recites that the layer of material which changes from a first to second appearance is composed of fused and fusible portions. However, Arens does not disclose, teach or suggest anywhere a layer of material that changes from a first to a second appearance that is composed of fused and fusible portions. Likewise, Arens does not disclose, teach or suggest a layer of material where fused and fusible portions form a visible pattern. Thus, Applicants submit that the application of Arens against claims 1 and 11 is misplaced and should be withdrawn.

Applicants also submit that claim 13 is not anticipated by Arens since the colored stratum layer of Arens is not an absorptive layer as alleged by the Examiner. The absorptive layer of Arens is the opaque microporous layer which is adjacent to the colored stratum layer. See Arens at Figs. 2 and 4. Moreover, as set forth in Arens, it is the microporous layer that that absorbs (i.e., become penetrated by) the viscous liquid solution of the amorphous polymer:crystallizable solvent composition once the composition reaches the specified temperature. See Arens at col. 2, lines 55-64. Moreover, when the composition has penetrated substantially the entire depth of the microporous layer the underlying colored stratum is revealed. See Arens at col. 2, line 68 - col. 3, line 4. Thus, it is clearly apparent from the disclosure of Arens that the colored stratum is not an absorptive layer with a first pattern printed thereon as required by claim 13. Withdrawal of the rejection is respectfully requested.

Rejection of Claims 7-10

Claims 7-10 stand rejected as being obvious over Spirg in view of Haas. Specifically the Examiner contends that Spirg does not disclose visible patterns including text, cross

hatching, parallel dashes or dots as required by claims 7-10. See Office Action at paragraph 5. The Examiner also contends that Haas (accidentally listed as Spirg) discloses pattern indicators to a thresh hold parameter which display text, dots, bar codes, numerals, etc. See id. Accordingly, it is the Examiner's contention that it would be obvious to one in the ordinary skill in the art to provide a visible pattern as selected from the group disclosed in Haas and the indicator disclosed by Spirg in order to enhance the visibility in the absence of the light on longer distances. See id.

In response, Applicants respectfully submit that a *prima facie* case of obviousness has not been set forth. Applicants respectfully point that Section 2142 of the Manual of Patent Examining Procedure (M.P.E.P.) requires three basic criteria to be met for a *prima facie* case of obviousness:

First, there must be some suggestion or motivation either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined), must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must be found in the prior art, and not on the applicants' disclosure. In re

Vaeck, 947 F.2d 488, 20 U.S.P.Q.2d1438 (Fed. Cir. 1981) (emphasis added).

First, the Examiner has not indicated why one skilled in the art in possession of Spirg would seek out Haas in an attempt to achieve the claimed invention. While the Office Action recites that it would have been obvious to one skilled in the art to combine Haas with Spirg to enhance visibility, this statement only indicates the advantages of the combination once the combination has already been made. However, such a statement does not indicate why one skilled in the art in possession of Spirg would seek out Haas in an attempt to achieve the present invention.

Second, the hypothetical combination of Spirg and Haas does not teach or suggest all the limitation of claim 1 from which claims 7-10 depend. Specifically, claim 1 as amended requires both fused and fusible portions on the layer of material which changes from a first appearance to a second appearance. However, as Applicants previously pointed out, Spirg does not disclose, teach or suggest a layer of material having fused and fusible portions. Likewise, Haas does not fill this void. Likewise, neither of the references teach or suggest a visible pattern formed from fused and fusible portions. Accordingly,

the combination even if proper does not teach or suggest all the limitations of claim 1 and dependent claims 7-10.

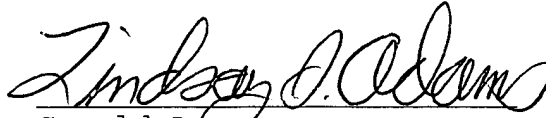
In view of the above, Applicants respectfully request the withdrawal of the rejection of claims 7-10. First, no motivation or suggestion has been set forth as to why the combination should be made. Second, the combination even if made does not teach or suggest all the limitation of the claims. Withdrawal of the rejection is respectfully requested.

Applicants do not believe that any additional fees other than the requisite fee for a one (1) month extension of time. However, if any additional fees are due, please charge such sums to our Deposit Account No. 50-1145

If the Examiner has any questions regarding the amendment submitted herewith, the Examiner is respectfully requested to contact the undersigned attorney at the telephone number set forth below.

A copy of the claims in a marked up version is attached as an Appendix to this amendment. The additions are underscored while the deletions are within brackets.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Gerald Levy".

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APPENDIX

Please amend claims 13 and 14 as follows:

1. (Amended) A temperature indicating surface comprising:
a layer of material which substantially irreversibly changes from a first appearance to a second appearance in response to exposure to a threshold temperature, and where said material irreversibly fuses in response to said threshold temperature, wherein a first portion of said layer of material is initially free from exposure to said threshold temperature and thereby fusible which provides [has] said first appearance to said first portion, and wherein a second portion of said layer of material is initially exposed to said threshold temperature and thereby fused which provides [has] said second appearance to said second portion, whereby said first portion and said second portion form a visible pattern.

14. (Amended) A temperature indicating surface including a first portion comprised of material that irreversibly fuses upon exposure to a threshold temperature thereby changing [which changes] from a first appearance to a second appearance [in response to exposure to a threshold temperature], said first portion initially being fusible to provide [of] said first appearance, and further including a second portion of said material being fused to provide said second appearance.

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